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Attorneys for Plaintiff
NEXTEC APPLICATIONS, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEXTEC APPLICATIONS, INC., a Georgia
corporation,

Plaintiff,

v.

BROOKWOOD COMPANIES, INC., a
Delaware corporation,

Defendant.

ECF CASE

Case No. 07CV6901 (RJH)(THK)

**NOTICE OF MOTION TO DISREGARD AND/OR STRIKE
THE 30(B)(6) DEPOSITION TESTIMONY OF ATLANTIC DIVING
SUPPLY, INC. AND SECTIONS OF THE AFFIDAVIT OF AMY S. COYNE
AND, IN THE ALTERNATIVE, REQUEST FOR LEAVE TO FILE A SUR-REPLY**

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law in Support of Plaintiff's Motion to Disregard and/or Strike the 30(b)(6) Deposition Testimony of Atlantic Diving Supply, Inc. and Sections of the Affidavit of Amy S. Coyne, and in the Alternative Request for Leave to File a Sur-reply, and all prior pleadings and proceedings herein, Plaintiff Nextec Application Inc., by their attorneys Sheppard Mullin Richter & Hampton LLP, will move this Court, before the Honorable Richard J. Holwell, United States District Judge, United States District Court for the Southern District of New York, at the United States Court House, 500 Pearl Street, New York, New York, for an Order, disregarding and/or striking the 30(b)(6) deposition testimony of Atlantic Diving Supply, Inc. attached as Tab No. 2 of the

Declaration of Natalie C. Clayton [Docket No. unavailable] and Paragraphs 6, 14, 15, and 16 (second sentence) of the Affidavit of Amy S. Coyne [Docket No. unavailable], and in the alternative granting Plaintiff for leave to examine Ms. Coyne, the basis of her testimony and to file a sur-reply, and for such other and further relief as the Court may deem just and proper.

Proposed forms of order and the requested alternative order is attached hereto as Exhibits 1 and 2, respectively.

Dated: September 5, 2008

SHEPPARD MULLIN RICHTER & HAMPTON LLP

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EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
NEXTEC APPLICATIONS, INC.,	:
a Georgia corporation,	:
	:
Plaintiff,	:
	:
	:
v.	:
	:
BROOKWOOD COMPANIES, INC.,	:
a Delaware Corporation.	:
	:
Defendant.	:
	:
	:
	:
-----X	

ECF Case 07-CV-6901 (RJH)(THK)

**[PROPOSED] ORDER
DISREGARDING AND/OR
STRIKING THE 30(B)(6)
DEPOSITION TESTIMONY OF
ATLANTIC DIVING SUPPLY,
INC. AND SECTIONS OF THE
AFFIDAVIT OF AMY S. COYNE**

Having duly considered Parties' arguments and the evidence before the Court, the Court hereby finds that the Federal Rule of Civil Procedure 30(b)(6) deposition testimony of Atlantic Diving Supply, Inc. attached to the Declaration of Natalie C. Clayton as Tab No. 2 is self-serving and unsubstantiated. The Court further finds that Paragraph 6, Paragraph 14, Paragraph 15, and Paragraph 16, sentences 2 of the Affidavit of Amy S. Coyne are self-serving and unsubstantiated. Accordingly, the Court **HEREBY DISREGARDS** and **STRIKES** from the record Tab No. 2 of the Declaration of Natalie C. Clayton and Paragraphs 6, 14, 15, and 16 (second sentence) of the Affidavit of Amy S. Coyne.

SO ORDERED:

Dated: New York, New York

Honorable Richard J. Holwell
United States District Judge

**[PROPOSED] ORDER DISREGARDING
AND STRIKING EVIDENCE
07CV6901(RJH)**

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EXHIBIT 2

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NEXTEC APPLICATIONS, INC.,
a Georgia corporation,

Plaintiff,

v.

BROOKWOOD COMPANIES, INC.,
a Delaware Corporation.

Defendant.
-----X

ECF Case 07-CV-6901 (RJH)(THK)

**[PROPOSED] ORDER
GRANTING PLAINTIFF
LEAVE TO FILE A SUR-REPLY**

Having duly considered Parties' arguments and the evidence before the Court, the Court hereby finds that the Defendant has introduced significant new evidence in support of its Motion for Summary Judgment on reply in the form of new deposition testimony of Amy Coyne as the Federal Rule of Civil Procedure deponent for Atlantic Diving Supply, Inc. and the Affidavit of Amy S. Coyne.

Accordingly, the Court **HEREBY GRANTS** Plaintiff leave to examine Ms. Coyne, the basis of her testimony and to file a sur-reply to respond to Defendant's Reply Memorandum in Support of Defendant's Motion for Partial Summary Judgment.

SO ORDERED:

Dated: New York, New York

Honorable Richard J. Holwell
United States District Judge